

Bradley S. Keller, WSBA #10665
Ralph E. Cromwell, Jr., WSBA #11784
Jofrey M. McWilliam, WSBA #28441
Byrnes Keller Cromwell LLP
1000 Second Avenue, 38th Floor
Seattle, WA 98104
(206) 622-2000
Facsimile No.: (206) 622-2522

Attorneys for Perkins Coie LLP

The Honorable Frederick P. Corbit
Chapter: 7

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

GIGA WATT, INC., a Washington
corporation,

Debtor.

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

PERKINS COIE, LLP, a Washington
limited liability partnership; LOWELL
NESS, individual and California resident;
GIGA WATT PTE., LTD. a Singapore
corporation; and ANDREY KUZENNY, a
citizen of the Russian Federation;

Defendants

and

THE GIGA WATT PROJECT, a
partnership,

Nominal defendant.

No. 18-03197-FPC11

The Honorable Frederick P. Corbit

CHAPTER 7

Adv. Case No. 20-80031

**AFFIDAVIT OF RALPH E.
CROMWELL, JR. REGARDING
TRUSTEE'S MOTION TO
AMEND COMPLAINT**

1 Ralph E. Cromwell, Jr., states as follows:

2
3 1. I am an attorney with Byrnes Keller Cromwell LLP, counsel to defendant
4 Perkins Coie LLP and Lowell Ness (“Perkins”) in this matter. I have personal
5 knowledge of the matters and statements set forth below, which are based on my
6 representation of Perkins in this matter, including my understanding of the content of
7 Perkins’ files, my review of tens of thousands of pages documents collected and/or
8 produced in this matter by the parties, the pleadings that have been served and/or filed,
9 and my discussions with counsel for the Trustee. The exhibits attached hereto are true
10 and correct copies of, or excerpts of, various documents produced and/or reviewed
11 relating to this matter.
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14 2. One of the sets of documents produced by the Trustee in this matter
15 originated with the law firm Wilson Sonsini Goodrich & Rosati (“Wilson Sonsini”). It
16 appears from other documents produced that the debtor was sued by StormsMedia LLC
17 in early 2018 on a claim that the WTT tokens (“tokens”) sold by Giga Watt Pte., Ltd.,
18 (“GW Singapore”) were unregistered securities. The debtor interviewed Perkins Coie
19 LLP as possible defense counsel but instead chose to hire Barry Kaplan of Wilson
20 Sonsini. I know Mr. Kaplan from many contexts and, in early 2018, he was regarded
21 as perhaps the leading securities defense lawyer in the Pacific Northwest.
22

23 3. In the Spring of 2018, the Securities Exchange Commission began an
24 investigation of the cryptocurrency industry and included the debtor as one of the
25 subjects of the investigation. In addition, multiple other civil actions were filed in which
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1 not only was the debtor a defendant, but GW Singapore, Cryptonomos Pte., Ltd.
2 (“Cryptonomos”), and David Carlson, the then CEO of the debtor, were named as
3 defendants. In all of these matters, the debtor again hired Barry Kaplan of Wilson
4 Sonsini as counsel. From the Wilson Sonsini documents produced by the Trustee, it
5 appears that, in May of 2018, Wilson Sonsini made a concerted effort to have the debtor
6 circulate a document retention memo.
7

8
9 4. On May 2, 2018, the SEC issued broad document requests to the debtor.
10 See **Exhibit 1**. As a result, Wilson Sonsini organized an on-site document collection of
11 electronic and hard copy documents from the debtor on May 21-24, 2018. See **Exhibit**
12 **2**. This included in-person meetings with a variety of the debtor’s officers and
13 management. See **Exhibit 3**. As explained by a Wilson Sonsini attorney in an email
14 dated May 25, 2019, Wilson Sonsini’s practice was to “preserve and collect far more
15 than we actually review or produce.” See **Exhibit 4**. The vendor that Wilson Sonsini
16 used to store and process the documents collected was Lighthouse. E.g., **Exhibit 5**.
17 Lighthouse was actually on-site at the debtor’s offices with Wilson Sonsini for the
18 document collection. See **Exhibit 6**.
19

20
21 5. In February of 2022, I learned from the Trustee’s counsel that Lighthouse
22 still had the documents that Wilson Sonsini had collected from the debtor in 2018. On
23 March 3, 2022, the Trustee’s counsel sent a turnover letter to Lighthouse. See **Exhibit**
24 **7**. In that letter, the Trustee recounts that 1) the documents held by Lighthouse are the
25 debtor’s documents and therefore belong to the Trustee, and 2) that in June of 2019, the
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1 Trustee had already contacted Lighthouse to obtain a more limited group of documents.
2
3 The earlier request—a letter dated June 11, 2019—was attached to the turn-over letter
4 dated March 1, 2022, and is attached hereto as **Exhibit 8**. In the June 2019 letter, the
5 Trustee recounts that Wilson Sonsini had informed the Trustee that Lighthouse had
6 copies of the debtor’s documents. *Id.* In the June 2019 letter, the Trustee asks
7 Lighthouse to make a partial production of specified documents, and then goes on to
8 say:

9 On a longer-term, but reasonable basis, the Trustee would like to
10 obtain a copy of all documents and records, defined in the broadest
11 sense, in Lighthouse’s possession, custody or control that belongs
12 to the Debtor.

13 *Id.* at 2, 3.

14 6. For the next three years, the Trustee did nothing that I am aware of to
15 follow-through on obtaining and reviewing the remaining documents of the debtor that
16 Lighthouse continued to hold, until the March 3, 2022, turn-over letter was sent to
17 Lighthouse. These remaining Lighthouse documents are the documents the Trustee
18 now describes as “newly-discovered” despite having known of their existence and
19 location since at least June of 2019.

20
21 7. In March and April of 2022, I had discussions with Trustee’s counsel about
22 sharing the cost of having the Lighthouse documents prepared and produced. In brief,
23 Perkins agreed to share the cost, and discussions went back and forth with the Trustee’s
24 counsel about the most efficient way to proceed.
25
26

1 8. During efforts to get the documents held by Lighthouse produced, the
2
3 Trustee continued to take the position that the Lighthouse documents belonged to the
4 debtor and were subject to the control of the Trustee. For example, on April 21, 2022,
5 when my paralegal attempted to arrange for production by Lighthouse, the Trustee's
6 counsel responded:

7 Hold on, please.

8 Lighthouse, you do not have authority to send the info. It belongs
9 to the bankruptcy estate.

10 Ralph, let's talk in a bit.

11 *See Exhibit 9.*

12 9. Once documents were finally obtained from Lighthouse, it was clear that
13 they included considerable materials which had not previously been produced to
14 Perkins. In this regard, on July 20, 2021, Perkins had served broad discovery requests
15 on counsel for the Trustee/debtor. *See Exhibit 10.* Among the Lighthouse documents
16 are numerous documents that are clearly responsive to Perkins' July 2021 discovery
17 requests. For example, as described in paragraphs 23 and 24 below, there are documents
18 showing that the debtor's CFO was actively involved in directing distributions by
19 Perkins of the funds held in escrow to allow the debtor to pay construction bills.
20 Nevertheless, the Trustee apparently did nothing to obtain or review the Lighthouse
21 documents and, to my knowledge, the Trustee did not inform Perkins of their existence
22 until approximately February of 2022.
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1 10. Starting in mid-July of 2022, the Trustee’s counsel emailed to me two
2 documents with Lighthouse production numbers asking for an explanation of why
3 Perkins had not previously produced them. *See Exhibits 11, 12.* One of the documents
4 is a subpoena directed to “GigaWatt” and addressed to Perkins Coie. It asks that “Giga
5 Watt/Cryptonomos” documents be produced to the government:
6

7 any and all records concerning Giga Watt/Cryptonomos users or
8 accountholders associated with the following identifiers:
9 Romanian phone number....

10 **Exhibit 11 at 2.** From the documents produced by Lighthouse, it appears that an
11 individual in Eastern Europe had briefly visited the website created by Cryptonomos to
12 sell tokens and had created an identity for himself. *See Exhibit 13.* That person’s
13 phone was apparently later somehow involved in a grand jury proceeding and the
14 government wanted to know what information existed regarding this individual. The
15 government apparently initially attempted to contact Cryptonomos through its
16 “support@cryptonomos” email address, and that request was then eventually passed on
17 to Perkins. **Exhibit 14.** Perkins was asked to contact the issuer of the subpoena and,
18 ultimately, to coordinate the necessary production. Timur Usmanov, the CFO of the
19 debtor, assisted in collecting responsive documents from Cryptonomos (with which he
20 was also involved), and provided them to Perkins. Zeev Kirsh then directed Dave
21 Carlson, the then CEO of the debtor, to certify the production as complete. **Exhibit 15.**
22 Kirsh was a newly hired in-house lawyer for Cryptonomos. **Exhibit 16.** I understand
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1 that Perkins billed the work associated with this subpoena to GW Singapore and
2 maintains that work in a file that identifies GW Singapore as the client.
3

4 11. The second document was an email dated September 11, 2017, from
5 Martha Sandoval, a partner in Perkins' Seattle office, to Timur Usmanov, the CFO of
6 the debtor, and to Zeev Kirsh, an in-house attorney for Cryptonomos. **Exhibit 12.** This
7 email pertains to a request initially made to Perkins by Katrina Grant, an attorney for
8 Cryptonomos, in an email dated May 11, 2017. **Exhibit 17.** By a retention letter dated
9 March 3, 2017, Grant had previously retained Perkins to advise Cryptonomos regarding
10 structuring and conducting a sale of digital tokens by GW Singapore. **Exhibit 18.** In
11 her May 11, 2017, email, Grant tells Perkins, "we were advised by the accounting firm
12 that we had too much exposure for tax and liability reasons." **Exhibit 17.** Attached to
13 Grant's email is a complicated chart showing the debtor and a number of proposed, yet-
14 to-be-formed entities to hold specific assets. *Id.* Eventually, Grant was connected to
15 Martha Sandoval, a Perkins' attorney in its Seattle office with experience in structuring
16 corporate entities.
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19 12. On July 26, 2017, Sandoval met with Dave Carlson, the then CEO of the
20 debtor, in Perkins' Seattle office to get background information and to discuss what she
21 was being asked to undertake. On August 8, 2017, Dave Carlson emailed other owners
22 of the debtor to say he had met with Martha Sandoval and to ask whether he should
23 retain Perkins "to audit our structure and to build us a robust structure going forward":
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1 I'm asking you for your feedback on whether to engage Perkins to
2 audit our structure and to build us a robust structure going forward.
3 At this point I think it is fair to say that Perkins knows "very little"
4 about our business, with the exception of two entities and a
proposed third entity (Hosting)."

5 **Exhibit 19 at 413614.** In response, Timur Usmanov, the then-CFO of the debtor, states
6 that he agrees they should consider retaining Perkins. *Id.* at 413613. In late
7 August/early September 2017, it appears Perkins anticipated that it would be retained
8 by the debtor to address corporate structuring issues. However, I am unaware of any
9 response by Carlson's co-owners to his inquiry about whether to retain Perkins, and I
10 am unaware of any further communication by the debtor to Perkins saying that the
11 debtor definitely wanted to retain Perkins.
12

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14 13. As a result, matters drifted along until late September of 2017 with
15 Perkins trying to obtain additional background information. By that point, both
16 Usmanov and Kirsh were communicating with Perkins. On September 12, 2017, Kirsh
17 emailed Usmanov to suggest that he, Kirsh, could do some of the work Perkins is being
18 asked to do and thereby save the expense of having Perkins involved. In response,
19 Usmanov says that Perkins can gather documents and see if they were properly filed
20 and "[m]aybe" draft an "SHA" (Shareholders Agreement) but then Hirsh can "take
21 over." **Exhibit 19.** On September 28, 2017, Zeev Kirsh, in-house counsel for
22 Cryptonomos, told a paralegal at Perkins, in a telephone call, that he did not understand
23 anything that Perkins was doing and that it was a waste of time and money for Perkins
24 to continue. *See Exhibit 20.* I understand this communication came as a surprise and
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1 was somewhat baffling to Perkins. But coupled with Perkins' inability to get
2 background information, Kirsh's call effectively ended Perkins' potential involvement
3 in efforts to devise a comprehensive corporate structure plan. Although additional
4 discovery would be helpful, it appears that Usmanov and Kirsh may have decided that
5 the work being discussed with Perkins could be done internally by Cryptonomos' in-
6 house lawyers at lower cost. There are Lighthouse documents showing that Kirsh then
7 began work on defining the relationship between the debtor and GW Singapore, and on
8 creating a Shareholders Agreement for each of these entities—matters which had
9 previously been discussed with Perkins. *See Exhibits 21, 22.*

12 14. I understand that Perkins' work pertaining to a possible restructuring was
13 viewed as a continuation of earlier discussions between Perkins and Grant and, like that
14 earlier work, was billed to Cryptonomos. I also understand that information related to
15 that work is held by Perkins in a file which identifies Cryptonomos as the client.

17 15. It is my understanding that Perkins has no record that any retention letter
18 was ever sent to or entered into with the debtor, no record of a conflict check in any
19 matter to be opened for the debtor, and no record of any bill ever being sent to the
20 debtor. In short, in its internal records, Perkins does not have the normal indicia of
21 having represented the debtor.

23 16. With regard to any arguable subjective belief that an attorney-client
24 relationship did commence, it is the reasonable belief, based on objective evidence, of
25 the purported client—i.e., the entity in this case—that is at issue. In this regard, it is my
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1 understanding that Perkins entered into retention letters only with Cryptonomos and,
2 later, GW Singapore. **Exhibits 18, 23.** Both of those retention letters expressly state
3 that Perkins does not represent any related or affiliated entity unless separately and
4 clearly undertaken and agreed to. **Exhibit 18 at 2; Exhibit 23 at 2.** Moreover, the
5 Cryptonomos retention letter was signed by the CEO of Cryptonomos, Nikolay
6 Evdokimov, **Exhibit 18 at 5**, who was also the President of the debtor. **Exhibit 24 at**
7 **2.** As such, the debtor knew or should have known that Perkins was not its counsel
8 unless and until such representation was separately and clearly agreed to. My
9 understanding is that no separate retention letter with the debtor was ever entered into.
10

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12 17. With this background, in July of 2022, when counsel for the Trustee asked
13 why Perkins had not produced documents related to the grand jury subpoena and the
14 restructuring issues, I first pointed out that I was not aware of any discovery request to
15 Perkins from the Trustee other than the Rule 2004 subpoena issued by the Trustee to
16 Perkins in the summer of 2020. *See Dkt. 637 (Exhibit 25).* That subpoena, by its
17 terms, is limited to non-privileged documents related to an escrow of token sale
18 proceeds, or to agreements between the debtor and GW Singapore and/or Cryptonomos.
19 *Id.* I do not believe (a) a grand jury subpoena regarding an Eastern European individual
20 who briefly visited a website maintained by Cryptonomos without ever buying a token,
21 or (b) questions regarding possible corporate structuring that never went anywhere, to
22 be related to an escrow, or to constitute an agreement between the debtor and other
23 entities. In other words, with one exception described below, I do not believe the
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1 documents that counsel for the Trustee was asking about were responsive to any
2 discovery issued to Perkins. The possible exception is that there is a brief reference to
3 the existence of an escrow in Martha Sandoval's notes of her discussion with Dave
4 Carlson on July 26, 2017. I believe Ms. Sandoval's notes are privileged as described
5 below.
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8 18. In addition, given my understanding that Perkins has none of the normal
9 indicia of having represented the debtor, but has only retention letters, files, and billing
10 records that reflect a representation of GW Singapore and Cryptonomos, there are
11 privilege and client confidence issues regarding Perkins' ability to produce to the
12 Trustee from these files, even if served with an appropriate discovery request. Under
13 Rule of Professional Conduct 1.6, Perkins has a broad duty to preserve in confidence
14 "information relating to the representation of a client unless the client gives informed
15 consent." Comment 21 to RPC 1.6 explains that this clause is to be read broadly and is
16 not limited to privileged information or secrets. *See also* ABA Formal Opinion 16-473
17 Obligations Upon Receiving a Subpoena or Other Compulsory Process for Client
18 Documents or Information. **Exhibit 26.** Moreover, GW Singapore is a defendant in
19 this matter and thus is directly adverse to the Trustee. Although Cryptonomos is not a
20 defendant, the Trustee routinely talks about the wrongs supposedly perpetrated by
21 "Russian fraudsters" or the "Russian Team," which in part appear to refer to persons
22 associated with Cryptonomos. Given that the Trustee is directly adverse or potentially
23 adverse to both GW Singapore and Cryptonomos, I believe the ethical restrictions of
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1 the RPCs are especially relevant, creating clear ethical obstacles to Perkins' ability to
2 provide or discuss with the Trustee information from files held for GW Singapore or
3 Cryptonomos, absent their informed consent. The Washington Supreme Court
4 rigorously enforces these ethical obligations. *See, e.g., In re Cross* 198 Wn. 806, 500
5 P.3d 958 Wash. (2021) (nine-month suspension from the practice of law for lawyer who
6 revealed confidences of a client to an adversary of the client without the client's
7 consent).

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10 19. In response, the Trustee's counsel explained that she believes that the
11 existence of an attorney-client relationship is not determined from how an attorney
12 holds files or who pays for the legal work, but rather can be created by a reasonable,
13 subjective understanding that the attorney is representing you. In other words, if you
14 read through the files, which Perkins created and maintains for GW Singapore and
15 Cryptonomos, there are documents from which the Trustee could argue that the debtor
16 might have subjectively believed that Perkins was also representing the debtor
17 regarding the grand jury subpoena and the potential corporate structuring. At the same
18 time, however, what someone could reasonably believe is a factual question that GW
19 Singapore and/or Cryptonomos might dispute. For example, Dave Carlson's, August
20 7, 2017, email to the co-owners asking if he should hire Perkins seems to reflect a belief
21 that, as of August 7, 2017, the debtor had not yet retained Perkins and was uncertain of
22 whether it should do so. *See, Exhibit 19 at 413614*. In addition, since there are two
23 Giga Watt entities, one of which was a specifically retained client and of which was
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1 not, and because the term seems to have been used generically to describe one, or all
2 three of the related entities, references to “GigaWatt” are ambiguous and unclear.
3 Accordingly, that the Trustee may now claim that the debtor subjectively believed it
4 was a client of Perkins does not, in my opinion, eliminate the requirement of RPC 1.6
5 that Perkins maintain the confidentiality of files that it identifies as belonging to
6 Cryptonomos and GW Singapore absent their informed consent.
7

8
9 20. I have had multiple conversations with the Trustee’s counsel wherein I
10 explained that Perkins maintains files that Perkins believes belong to GW Singapore
11 and Cryptonomos and which it cannot produce absent informed consent from them,
12 which it has not been able to obtain. For example, I was first retained by Perkins in the
13 Summer of 2020 in connection with the Rule 2004 subpoena which the Trustee issued
14 to Perkins. My recollection is that in my earliest discussions with the Trustee’s counsel,
15 I explained that all of Perkins’ files were maintained in the name of GW Singapore and
16 Cryptonomos, that I understood Perkins’ internal records did not reflect it having
17 represented the debtor and, accordingly, that Perkins’ ethical obligations under RPC 1.6
18 required they preserve the confidentiality of these files. The result of my discussions
19 with the Trustee’s counsel was the Order entered by this Court at **Dkt. 673 (Exhibit**
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21 **27)**. That order provides:

22 1. For purposes of Rule of Professional Conduct 1.6(b)(6),
23 Perkins is hereby directed to produce to the Trustee, in a reasonably
24 prompt fashion, those non-privileged documents which are
25 responsive to the Rule 2004 Order which this Court entered on July
26 6, 2020.

1 See **Dkt. 673 (Exhibit 27)**. It is my recollection that this order reflected the arrangement
2 that I negotiated with Trustee's counsel that Perkins would produce 1) non-privileged
3 documents that were 2) responsive to the Rule 2004 Subpoena, and that, to facilitate
4 this production 3) the court would order production pursuant to RPC 1.6(b)(6). The
5 Order permits Perkins to designate the documents produced as confidential in order to
6 satisfy Perkins' ethical obligations to maintain the confidentiality, to the extent possible,
7 of even those documents which it is allowed or forced to produce under any of the
8 exceptions stated in RPC 1.6(b). Perkins has complied with this carefully negotiated
9 order in producing documents to the Trustee. However, Perkins otherwise cannot
10 produce or disclose information in its files absent consent or a further court order.
11
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13 21. The limitations on Perkins' ability to produce additional documents has
14 led to multiple discussions wherein the Trustee's counsel suggested that the Trustee
15 would bring a Motion to Compel production of the information withheld by Perkins,
16 perhaps under the crime-fraud exception to the attorney-client privilege, on the
17 Trustee's theory that GW Singapore's sale of tokens constituted a crime or fraud in
18 which Cryptonomos and Perkins participated—wittingly or unwittingly. In short, that
19 Perkins has additional files, which it cannot ethically produce, has been an issue on the
20 table in discussion with the Trustee's counsel from the start of my involvement in this
21 matter.
22
23

24 22. At some point in July or August of 2022, counsel for the Trustee began
25 stating that she was interested in amending the Complaint to assert a claim that Perkins
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1 had represented the debtor regarding the subpoena and corporate structuring matters
2 described above. Ultimately, I told the Trustee's counsel that if she wanted to add a
3 claim that Perkins represented the debtor regarding the subpoena and corporate
4 structuring matters described above, I thought it likely that Perkins would consent and
5 that a motion would not be necessary.
6

7
8 23. Counsel for the Trustee also indicated that she was interested in adding
9 Timur Usmanov, the former CFO of the debtor, as a defendant. In this regard, the
10 banking records of the debtor show that, as soon as Perkins began disbursing money to
11 GW Singapore from the "escrow" on August 8, 2017, GW Singapore began wire-
12 transferring millions of dollars to the debtor from the bank account which had just
13 received the distributions from Perkins. In the SEC investigation described above, the
14 debtor—through Wilson Sonsini—represented to the SEC that all proceeds of token
15 sales were used to fund the construction of new facilities by the debtor. **See Exhibit 28**
16 **at 11.** Accordingly, Perkins, in its Answer in this matter, alleged that, even if it had
17 "prematurely" released funds to GW Singapore from an "escrow" (which it denied
18 doing), the debtor was not damaged because GW Singapore then wire-transferred the
19 funds to the debtor.
20
21

22 24. On this point, at Timur Usmanov's (former CFO of the debtor) deposition,
23 on March 7, 2022, counsel for the Trustee asked Usmanov for his understanding
24 regarding the source of the funds which GW Singapore wire transferred to the debtor.
25 His answer was that those funds came from the escrow:
26

1 Q.: When Giga Watt Singapore deposited money into Giga
2 Watt Wenatchee's bank accounts, what transparency did
3 you have into the source of that money?

4 A.: I was told the money was from escrow, released from
5 escrow.

6 **Exhibit 29 at 110:23-111:2.** In the Lighthouse Documents, it appears that Usmanov
7 not only believed that the money arriving at GW Wenatchee (the debtor) was coming
8 from escrow, but that he tracked the escrow balance, and had direct access, and the
9 authority and ability, to wire transfer funds from GW Singapore's bank account to the
10 debtor, did so on multiple occasions, and was actively involved in obtaining, on behalf
11 of the debtor, the release of funds from escrow, to the point of drafting the disbursement
12 requests which GW Singapore would then send to Perkins in its own name. In my
13 discussions with the Trustee's counsel, I understood her to say that she wanted to add a
14 new claim that Usmanov's conduct in this regard constituted a breach of the duties he
15 owed the debtor.
16

17 25. Based on this understanding, I again told counsel for the Trustee that if
18 she wanted to add a claim that Usmanov breached duties to the debtor based on the
19 conduct described above, Perkins would likely consent without the need for motion
20 practice.
21

22 26. However, I do not recall ever discussing with the Trustee's counsel any
23 other amendments to the existing Complaint. I do recall asking at one point if the
24 Trustee's counsel intended to delete any claims. I understood the Trustee's counsel to
25 say that she did not intend to delete claims, but rather to add claims and parties. Based
26

1 on that understanding, I told the Trustee's counsel that I thought Perkins would likely
2 consent to the amendments described above.
3

4 27. I also understood and believed that Trustee's counsel would provide a
5 draft Amended Complaint to us that would show the Trustee's proposed amendments
6 and that this would serve as a springboard to obtain Perkins' consent. I believe that the
7 Trustee's counsel, in a hearing on August 11, 2022, audio at **Dkt. 106**, references that
8 understanding ("I think I can have it [Amended Complaint] done sooner than that, show
9 it to Mr. Cromwell, and then negotiate with him...."). *See Dkt. 106 at 3:11.*
10

11 28. My original understanding was that the Trustee's counsel hoped to
12 complete a draft Amended Complaint by late August and show it to us. However, on
13 August 26, 2022, Trustee's counsel indicated she would not have an Amended
14 Complaint until September 8, 2022.
15

16 29. On August 26, 2022, Perkins filed its Reply Brief in its Ninth Circuit
17 appeal of the denial of its request to compel arbitration of the Trustee's claims. *See*
18 **Exhibit 30**. In its Reply, Perkins reiterated from its prior briefing to the courts below
19 that the theory the Trustee was arguing to defeat arbitration was not supported by the
20 allegations of the Trustee's original Complaint but was contrary to those allegations. In
21 Perkins' view, the allegations of the Trustee's original Complaint establish that the
22 debtor's claims are intertwined with the WTT Token Purchase Agreements which GW
23 Singapore used to sell tokens and which contain a broad arbitration clause. To reiterate
24 this point, Perkins, in its Reply Brief, quoted verbatim four of the paragraphs from the
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1 Trustee's Complaint and argued that the allegations of the Trustee's Complaint are
2 admissions which bind the debtor.
3

4 30. Only after Perkins filed its Reply Brief with the Ninth Circuit, such that
5 the briefing on appeal was complete, did the Trustee file an Amended Complaint on
6 September 8, 2022. **Dkt. 110.** I am not aware of receiving a draft of the proposed
7 amended complaint prior to its filing.
8

9 31. On September 12, 2022, counsel for the Trustee sent me a proposed
10 consent by Perkins, pursuant to FRCP 15(a)(2), to the then on-file Amended Complaint.
11

12 32. On September 15, 2022, I spoke with Trustee's counsel by telephone
13 regarding her request that Perkins consent to the now on-file Amended Complaint. In
14 part, I pointed out that the Amended Complaint completely deleted the original factual
15 premise of the Trustee's claims on which Perkins based its demand for arbitration. For
16 example, the Amended Complaint deleted all four of the paragraphs of the original
17 Complaint which Perkins quoted in its Reply Brief to the Ninth Circuit as described
18 above. I expressed concern that, if Perkins consented to such an amendment, the
19 Trustee would then argue that Perkins had consented to abandon its demand for
20 arbitration.
21

22 33. The Trustee's counsel's response to this concern was that the Amended
23 Complaint would "of course" moot the pending arbitration appeal but that the Trustee
24 had a right to amend. To my recollection, this is the first point at which the Trustee's
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1 counsel said anything to me about an Amended Complaint affecting Perkins' demand
2 for arbitration or affecting a fully briefed appeal to the Ninth Circuit.
3

4 34. I reiterated that I thought Perkins would consent to the addition of a claim
5 that it had represented the debtor in the matters described above, that Perkins would
6 consent to a claim against Usmanov as described above, but that I strongly doubted that
7 Perkins would consent to amendments that would be characterized as an abandonment
8 of its demand for arbitration or as mooted a fully briefed appeal. I believe I also
9 suggested, as a possible compromise, that if the Trustee wanted to take the extensive
10 new factual allegations in the Amended Complaint and add them to the existing factual
11 allegations in the original Complaint, so that both the original and new allegations
12 would be in the Trustee's Amended Complaint, that Perkins would perhaps consent to
13 such an approach. I understood the Trustee's counsel to decline that suggestion and to
14 say that the Trustee is entitled to amend his allegations as he sees fit.
15
16

17 35. In an email dated September 16, 2022, the Trustee's counsel proposed that
18 Perkins consent to a remand of the pending Ninth Circuit appeal, after which the Trustee
19 would file the Amended Complaint, stating that Perkins could then demand arbitration
20 based on the new factual allegations of the Amended Complaint, and then "go from
21 there." See **Exhibit 31**. I responded that I believed that Perkins' right to arbitration
22 stood or fell based on the allegations in effect when Perkins first demanded arbitration
23 and that Perkins would not agree to anything inconsistent with that position. *Id.* The
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1 Trustee's counsel disagreed with that position, *see id.*, and the present Motion to Amend
2 followed.
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4 36. Thereafter, the Trustee withdrew the Amended Complaint that had been
5 filed and filed a Motion to Amend that included a proposed amended complaint. The
6 proposed amended complaint includes still more edits and amendments to the now
7 withdrawn Amended Complaint. Since the filing of the Trustee's Motion to Amend,
8 counsel for the Trustee has continued to suggest that Perkins should stipulate to a
9 remand of the pending appeal. *See Exhibit 32.*
10

11 I certify under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct to the best of my knowledge.

13 DATED this 17th day of October 2022.

14 BYRNES KELLER CROMWELL LLP

15 By /s/ Ralph E. Cromwell, Jr.
16 Ralph E. Cromwell, Jr.,
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By /s/ Ralph E. Cromwell, Jr.
 Ralph E. Cromwell, Jr.
Attorneys for Plaintiffs
 1000 Second Avenue, 38th Floor
 Seattle, Washington 98104
 206-622-2000
 Fax: 206-622-2522
 Email: rcromwell@byrneskeller.com

BYRNES ♦ KELLER ♦ CROMWELL LLP
38TH FLOOR
1000 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 622-2000